

REMARKS/ARGUMENT

I. Status of the Claims

Claims 5-13, 15-18, and 20-24 are pending.

Claims 5-7, 9, 11 and 16 stand rejected.

II. Rejections Under 35 U.S.C. § 102(e)

Claims 5, 7, 9, 11 and 16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Breton et al (6,264,962). Submitted herewith is a Rule 1.131 declaration by the Applicant removing the Breton '962 patent as a reference.

The invention of applying a root growth compound to leaves was actually reduced to practice before the date of December 21, 1998. The Breton '962 patent does not claim the same invention as the Applicants' claimed invention and thus the reference should be removed from consideration as a prior art reference. Claims 5, 7, 9, 11 and 16 are not identically claimed by the Breton '962 patent and thus a Rule 1.131 declaration is proper to remove a 102(e) reference where the same invention is not claimed.

The Applicant respectfully request reconsideration and removal of the anticipation rejection of claims 5, 7, 9, 11

and 16 in light of the Applicants declaration that properly removes the Breton '962 patent as a reference.

III. Rejections Under 35 U.S.C. § 103

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Breton et al. (USPN 6,264,962). The enclosed Rule 1.131 declaration should effectively remove the Breton '962 patent as a prior art reference.

Applicants respectfully request reconsideration and removal of the obviousness rejection of claim 6.

IV Conclusion

Based on the foregoing, it is respectfully requested that all rejections be withdrawn and the application be passed to issue.

ENCLOSURES:

DECLARATION UNDER RULE 1.131 (7 PG. DEC.)

IDS DOCUMENTS

(4) PUBLICATIONS

Appl. No. 09/931,193
Resp. Dated Sep. 29, 2003
Reply to Office Action of Jun. 27, 2003

Respectfully submitted,

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The undersigned hereby certifies that this paper along with any paper or document referred to therein as being attached or enclosed, is being mailed with proper postage to the Commissioner for Patents, Mail Stop Non-Fee Amendment, P.O. Box 1450, Alexandria, VA 22313-1450- This 29th day of SEP 2003.



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